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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/623,259	07/18/2003	William Frederick Reeves	DC-05564	4696
7590	02/20/2009		EXAMINER	
Stephen A. Terrile			CARDENAS NAVIA, JAIME F	
HAMILTON & TERRILE, LLP				
PO Box 203518			ART UNIT	PAPER NUMBER
Austin, TX 78720			3624	
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			02/20/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/623,259	REEVES ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jaime Cardenas-Navia	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 11 November 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Introduction***

1. This **FINAL** office action is in response to communications received on November 11, 2008. Claim 1 has been amended. No new claims have been added. Claims 1-12 are currently pending.

### ***Response to Amendment***

2. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 101 rejections** set forth in the previous office action.

### ***Response to Arguments***

3. Applicant's arguments have been fully considered by the Examiner. In particular, Applicant argues regarding independent claims 1, 5, and 9 that (1) neither Lubash nor Smith teach or suggest "the scheduling the customer order and the taking into account the desired shipping schedule *enabling* shipping the item via a lower cost shipping method *as if* the order were shipped via an expedited shipping method. Applicant also argues that (2) all dependent claims are allowable as a result.

**Regarding argument (1)**, Examiner respectfully disagrees. Smith clearly teaches taking into account the desired shipping schedule when scheduling the customer order, and presenting a plurality of possible shipping routes (including type of transportation and cost, col. 21, lines 26-31, and date, col. 21, lines 48-53). These options *enable* shipping the item via a lower cost shipping method *as if* the order were shipped via an expedited shipping method.

**Regarding argument (2)**, Examiner respectfully disagrees as per the response to argument (1) above.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 1-12 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Lubash et al. (US 2003/0139952 A1) in view of Smith et al. (US 6,879,962 B1).

**Regarding claim 1**, Lubash teaches:

A computer-implemented method for scheduling work and delivery of material for items in a factory (par. 15, lines 9-19) comprising:

obtaining a customer order via a computer system (par. 27, lines 5-8), the customer order including an item ordered by a customer, the item having an associated quantity of a material to produce (par. 27, lines 1-5, par. 15, lines 9-14), the customer order including a desired shipping schedule (par. 15, lines 15-19, par. 27, lines 1-5);

determining a current state of the available inventory of material from a plurality of material sources via the computer system (par. 15, lines 13-14, 18, par. 22, lines 6-11, par. 27, lines 4-5);

generating a material request plan for producing the item using the customer order and the current state of the available inventory via the computer system, the generating a material request plan including scheduling the customer order based upon the desired shipping schedule (par. 27, lines 1-5, par. 15, lines 9-19);

executing the material request plan via the computer system, the executing the material request plan taking into account the desired shipping schedule (par. 29, lines 1-7, par. 15, lines 15-19).

Lubash does not expressly teach the scheduling the customer order and the taking into account the desired shipping schedule enabling shipping the item via a lower cost shipping method as if the order were shipped via an expedited shipping method.

Smith teaches the scheduling the customer order and the taking into account the desired shipping schedule enabling shipping the item via a lower cost shipping method as if the order were shipped via an expedited shipping method (col. 21, lines 3-56, various methods for shipping the item are either manually entered or automatically generated. There are multiple methods for shipping an item within the same time frame with varying costs, fig. 9, and so a lower cost shipping method is enabled).

The inventions of Lubash and Smith pertain to optimizing delivery of goods. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Smith does not teach away from or contradict Lubash, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of a flexible delivery scheduler that calculates cost and the teaching in Lubash that "other conventional and initial scheduling algorithms may also be used" (par. 27, lines 26-27).

**Regarding claim 2**, Lubash teaches wherein the desired shipping schedule, the customer order and the current state of the available inventory are used to generate a subsequent work schedule and a material delivery schedule (par. 27, lines 1-10, par. 15, lines 9-19).

**Regarding claim 3**, Lubash teaches wherein the obtaining the customer order includes using a status for the customer order (par. 27, lines 5-13, 17-20. Priority is a status), the status for each customer order being updated continuously (par. 6, lines 1-5, par. 31, lines 1-12); and the status for each outstanding customer order corresponds to an outstanding status (This is true by definition, no patentable weight).

Lubash does not expressly teach that the status is updated continuously no less than every ten minutes.

Official notice is given that updating continuously for any set increment of time, such as no less than every ten minutes, is old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage of updating information at appropriate intervals of time.

**Regarding claim 4**, Lubash does not specifically teach that the item is an information handling system. However, Lubash teaches that their invention “can be used in any system or process in which a plurality of unique input variables and available resources are used and monitored by a demand schedule to optimize the output of the system (par. 15, lines 5-8),” which

includes information handling systems (such as computers). Lubash teaches the example of a production facility for producing assemblies made from many combinations of parts and sub-parts (par. 15, lines 1-4), and further teaches the broadness of scope that the invention covers (par. 17, lines 1-20). Thus, it would have been obvious to one skilled in the art at the time of the invention that the item could be an information handling system, motivated by the teaching of Lubash that the invention covers a diverse range of manufacturing and production processes and systems.

**Regarding claims 5-8 and 9-12**, they are rejected using the same art and rationale used above for rejecting claims 1-4. This is because claims 5-8 and 9-12 claim a system and program product for performing the method of claims 1-4.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 17, 2009

/J. C./  
Examiner, Art Unit 3624

/Bradley B Bayat/  
Supervisory Patent Examiner, Art Unit 3624